

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KEVIN WEBB, et al.,	§ § §
v.	§ § §
BRAD LIVINGSTON, et al.,	§ § §
Plaintiffs,	CIVIL ACTION NO. 4:14-cv-03302 CONSOLIDATED WITH <i>Adams v. Livingston, 4:14-cv-03326</i> <i>Togonidze v. Livingston, 4:14-cv-03324</i>
Defendants.	§ §

**THE UNIVERSITY OF TEXAS MEDICAL BRANCH AND OWEN MURRAY'S REPLY
TO PLAINTIFF'S CONSOLIDATED RESPONSE TO DEFENDANTS' PARTIAL
MOTIONS FOR SUMMARY JUDGMENT PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 56**

Defendants The University of Texas Medical Branch at Galveston (“UTMB”) and Owen Murray (collectively the “UTMB Defendants”) file their Reply to Plaintiff’s Consolidated Response to Defendants’ Partial Motions for Summary Judgment Challenging Capacity to Assert Survival Claims (Dkt. No. 286):

DISCUSSION

Plaintiffs’ statement that “Texas courts have long held that when heirs execute a family settlement agreement (“FSA”) governing disposition of the estate assets, they may assert survival claims without the need to open an estate administration” is false. *See* Dkt. No. 286 at 3. As outlined in the UTMB’s Defendants’ Partial Motion for Summary Judgment, Texas law makes clear that “the estate plainly has standing” in survival actions. *See Austin Nursing Center, Inc. v. Lovato*, 171 S.W.3d 845, 851 (Tex. 2005). Generally, only *representatives* of the estate are entitled to bring a personal injury action. *Id.* at 848-50. Plaintiffs do not, and cannot, allege that anyone

is currently a proper representative of Robert Allen Webb's estate, and their response does not address this flaw or attempt to remedy it. *See generally* Dkt. No. 286.

The law makes room for an FSA to confer standing, in combination with other requirements, if, and only if, Plaintiff alleges and can prove that no administration is necessary. An FSA, in itself, does not cure the necessity for administration. *See generally Lovato*, 171 S.W.3d at 851.

The triggering factor determining whether an administration is necessary has nothing to do with whether there is an FSA. Rather, Plaintiff must allege and prove that no administration is necessary. It is Plaintiffs' burden to prove that no administration is necessary *before* the Court can even evaluate the sufficiency of any FSA. *See Ford Motor Co. v. Cammack*, 999 S.W.2d 1, 1 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) (reemphasizing that the burden is on the plaintiffs to prove that they are legal heirs and the estate owed no debts). Plaintiffs fail to meet that burden.

Furthermore, Plaintiffs' response did not address any of the deficiencies in their purported family settlement agreement that were outlined in UTMB's Partial Motion for Summary Judgment. Despite there being evidence that the FSA is not representative of the Plaintiffs' actual intent and that certain parties may be unknowingly waiving their right to inheritance, Plaintiffs provided no evidence to the contrary.

CONCLUSION AND PRAYER

Plaintiffs have not offered proof of a proper family settlement agreement, nor proof that there are no debts against the estate, such to eliminate the necessity of administration of the estate of Robert Allen Webb. The UTMB Defendants respectfully request that this Court grant their

Partial Motion for Summary Judgment, dismissing Plaintiffs survival claims, or in the alternative, abate them until a proper administration has taken place.

Respectfully submitted,

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NOTICE OF ELECTRONIC FILING

I, **JENNIFER L. DANIEL**, Assistant Attorney General of Texas, certify that I have electronically submitted for filing a true and correct copy of the above and foregoing to the Court, on January 30, 2017, in the Southern District of Texas, Houston Division.

/s/ JENNIFER L. DANIEL
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CERTIFICATE OF SERVICE

I, **JENNIFER L. DANIEL**, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing has been served on all counsel of record via electronic mail on January 30, 2017, as authorized by Fed. R. Civ. P. 5(b)(2) and in accordance with the electronic case filing procedures of the United States District Court for the Southern District of Texas.

/s/ JENNIFER L. DANIEL
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